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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,315	10/17/2001	Horst Fischer	200116.403D1	6566

500 7590 03/15/2006

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EXAMINER

MCINTOSH III, TRAVISS C

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/982,315

Applicant(s)

FISCHER ET AL.

Examiner

Traviss C. McIntosh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 59-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 59-67 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant is advised that the Notice of Allowance mailed is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114.

Applicant's submission filed on December 8, 2005 has been entered.

It is noted that the specification and claims have been amended and the drawings have been added.

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 59-63, drawn to compositions comprising a specific active agent and one or more of a compound that increases expression or increases trafficking of a CFTR, classified in class 514, subclass 456.

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- II. Claim 64, drawn to a composition comprising a polyphenolic compound of the formulas in the claim, a compound selected from resveratrol, ascorbic acid, ascorbate salts, and dehydroascorbic acid, and a carrier, classified in class 514, subclass 456.
- III. Claims 65-67, drawn to methods of treating cystic fibrosis by administering a composition comprising a flavone or isoflavone capable of stimulating chloride secretion, and one or more of a compound that increases expression or increases trafficking of a CFTR, classified in class 514, subclass 456.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions are drawn to compositions comprising different agents. The composition of groups I requires a specific flavone, and one or both of a compound that increases the expression of a CFTR or a compound that increases the trafficking to a CFTR to a plasma membrane of a cell wherein the composition of group II requires a generic flavone, one of resveratrol, ascorbic acid, ascorbate salts, or dehydroascorbic acid and a carrier. As such, it is noted that a reference anticipating or rendering obvious one group would not necessarily anticipate or render obvious the other group, and a search for one group would not be required for the other group.

Inventions I and III are unrelated. It is noted that the compositions of group I comprise a flavone, and one or both of a compound that increases the expression of a CFTR or a compound that increases the trafficking to a CFTR to a plasma membrane of a cell, and the methods of

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group III use a composition of a much broader scope, particularly, as they merely require flavones or isoflavones which stimulate chloride secretion to be combined with one or both of a compound that increases the expression of a CFTR or a compound that increases the trafficking to a CFTR to a plasma membrane of a cell. As such, a reference anticipating or rendering obvious the composition of group I may not necessarily anticipate or render obvious the method of group III and a reference anticipating or rendering obvious the methods of group III may not necessarily anticipate or render obvious the compositions of group I.

Inventions II and III are unrelated. It is noted that the compositions of group II comprise a flavone, and one of resveratrol, ascorbic acid, ascorbate salts, or dehydroascorbic acid and a carrier and the methods of group III require the use of a composition comprising a flavone or isoflavone which stimulate chloride secretion to be combined with one or both of a compound that increases the expression of a CFTR or a compound that increases the trafficking to a CFTR to a plasma membrane of a cell. As such, a reference anticipating or rendering obvious the composition of group II may not necessarily anticipate or render obvious the method of group III and a reference anticipating or rendering obvious the methods of group III may not necessarily anticipate or render obvious the compositions of group II.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

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A telephone call was made to Monica Sadersway on February 17, 2006 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traviss C. McIntosh whose telephone number is 571-272-0657.

The examiner can normally be reached on M-F 9:30-6:00.

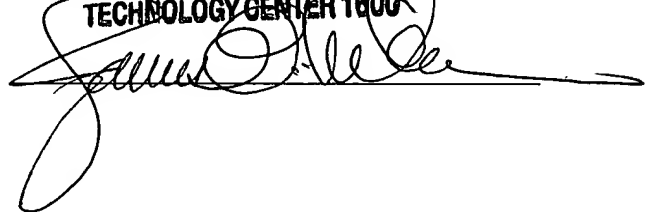
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Traviss C. McIntosh III  
February 16, 2006

Shaojia A. Jiang  
Supervisory Patent Examiner  
Art Unit 1623

**JAMES O. WILSON**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**

A handwritten signature in black ink, appearing to read 'James O. Wilson', is written over the printed name and title. The signature is fluid and cursive, with a large loop at the end.